

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CRIMINAL NO. 16-20051

v.

HON. MARK A. GOLDSMITH

D-1 JAMES MARTIN MARSCHNER,

Defendant.

**Government's Motion to Review Psychological Evaluation and
Eastwood Clinic Initial Assessment**

On November 24, 2015, Pretrial Services referred the Defendant to Eastwood Clinic in Detroit to participate in a sex offender assessment report and sex offender treatment. Eastwood Clinic conducted an initial assessment. The Defendant then attended weekly counseling sessions. And, a psychological evaluation of the Defendant was conducted. Both the initial assessment and the psychological evaluation are referred to in the presentence investigation report. Probation relies on these reports, at least in part, in making its recommendations.

The Government has not seen, nor had access to any of the reports. A district court may not rely on undisclosed, ex parte evidence as a basis for the

sentence. *United States v. Christman*, 509 F.3d 299 (6th Cir. 2007). Furthermore, under Federal Rule of Criminal Procedure 32(f)(1), the parties are required to “state in writing any objections, including objections to material information, sentencing guideline ranges, and policy statements contained in *or omitted from* the report.” (emphasis added). The Government cannot make such objections, as it is required to do, because the Government is unaware of what information was omitted from the report and whether that information is material.

In order for the Government to effectively make argument at sentencing, and in order to craft an informed sentencing recommendation, it is necessary for the Government to be able to review the conclusions of the Defendant’s psychological evaluation and initial assessment. The Government will also need to review the methodology used to come to those conclusions.

Pursuant to the local rule, the Government sought defense counsel’s concurrence in this motion, but was unable to obtain it.

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Dated: February 3, 2017

Certificate of Service

I hereby certify that on February 3, 2017, I electronically filed the Motion for a Court Order to View Eastwood Clinic Evaluation with the Clerk of the Court of the Eastern District of Michigan using the ECF system which will send notification of such filing to the following via electronic mail:

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